M/037/0012
cc: Tom

State of Utah
GARY R. HERBERT
Governor
GREG BELL
Lieutenant Governor

Department of
Environmental Quality
Amanda Smith
Executive Director
DIVISION OF AIR QUALITY
Cheryl Heying
Director

DAQO-001006-09

October 8, 2009

Sarah M. Fields, Program Director
Uranium Watch
P.O. Box 344
Moab, UT 84532

Dear Ms. Fields:

Thank you for your letter of September 14, 2009, in follow-up to our meeting on September 2nd. We appreciate your interest and concern with the environment of Utah and specifically regarding the quality of the air in our great state.

Our discussion on September 2nd and your follow-up letter focused on concerns related to the implementation of the National Emission Standards for Hazardous Air Pollutants found in 40 Code of Federal Regulations (CFR) Part 61, specifically Subpart B, National Emission Standards for Radon Emissions From Underground Uranium Mines. You are obviously concerned about how Utah implements this standard within the state. This letter will hopefully address your specific concerns and provide an explanation on how Utah implements this federal standard.

To begin, you mention in your letter a "Summary of Concerns," where you identify nine different concerns. This is followed by "Questions and Requests for Clarification," where you ask six specific questions. This letter will address those six specific questions and by doing so, hopefully will address your concerns as well.

Questions:

1. What exactly does the DAQ intend to do to implement its responsibilities for the administration and enforcement of Part 61 Subpart B and Subpart A requirements?

Answer: The DAQ has developed standard operating procedures to ensure sources are complying with Part 61 Subpart A & B. A letter and fact sheet on Part 61 Subparts A & B have been prepared and will soon be sent to all active and proposed uranium mining facilities in the state, reminding them of their responsibilities under these regulations. A copy of that letter and fact sheet is attached.

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Mailing Address: P.O. Box 144820 • Salt Lake City, UT 84114-4820
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www.deq.utah.gov
Printed on 100% recycled paper

2. Has the DAQ sent a letter to the owners of the La Sal Mines Project, Tony M Mine, and Velvet Mine requesting 40 C.F.R. §61.07 applications?

Answer: The owners of these facilities will receive the letter referred to in answer to question 1. The owners' response to this letter should include all information required by 40 C.F.R. §61.07.

3. What is the DAQ going to do about the fact that the owner of the La Sal Mines Project commenced operation of the combined Pandora Mine and La Sal Complex prior to receiving an approval order for their non-radiological emissions?

Answer: Operation as individual mines had commenced prior to them requiring an approval order. These individual mines did not require an approval order for their non-radiological emissions until they were combined and considered one source.

4. What is the DAQ going to do about the fact that the owner of the Pandora Mine, La Sal Complex, and the Tony M Mine commenced construction and operation of the mines without having submitted a 40 C.F.R. § 61.07 application, receiving a § 61.08 approval, or notifying the DAQ of the startup of operations, pursuant to § 61.09?

Answer: DAQ will require these owners to submit the required information in response to the letter referred to in answer to question 1.

5. What, exactly, is the applicable DAQ permitting program for Part 61 sources? 40 C.F.R. § 61.02 indicates that Part 61 state permits fall under Part 70 permitting requirements. Does the DAQ agree that a Part 61 approval is a Part 70 permit? Note that the notifications of Intent to Approve for the La Sal Mines Project and Velvet Mine indicate that they are approvals pursuant to, among other requirements, "NESHAP (Part 61), Title V (Part 70)."

Answer: 40 CFR 61.02 defines "Approved permit program" as "a [state] permit program approved by the [EPA] as meeting the requirements of part 70...." Utah has such an approved program; our Operating Permit Program was approved by the EPA in 1995 and is codified in Utah Administrative Code (UAC) R307-415. However, a Part 61 approval that you mention is not a Part 70 permit. The Part 70 (or Title V – referring to Title V of the 1990 Clean Air Act) permitting program has its own applicability requirements that are spelled out in the rule. The mines that are of concern are considered Title V sources, but are classified as "area sources" and are not required to obtain Title V or Part 70 permits. [NOTE: In a memorandum to the EPA Regional Offices on August 14, 2000, John S. Seitz, then Director of the EPA Office of Air Quality Planning and Standards, wrote that, "[the] ... source category list notice did not include any sources of radionuclides because no source met the weight-based major source threshold, and the Agency had not defined different criteria. At the current time, there remain no listed major source categories of radionuclide emissions.]

As a separate requirement, the mines may be subject to the New Source Review (NSR) permitting requirements of the state which require an Approval Order. The Approval Order requirements are outlined in UAC R307-401 and generally follow the federal NSR requirements spelled out in 40 CFR Part 51 and 52. The requirements for an Approval Order are separate and independent of the 40 CFR 61.07 requirements (and the Part 70 or

Title V requirements) and do not apply to radionuclides. If the mine were below our deminimus levels (see UAC R307-401-9, Small Source Exemption), neither an NOI nor an Approval Order would be required. Regardless, the applicability requirements of our permitting programs, be they Title V or NSR, are separate and distinct from the requirements spelled out in 40 CFR 61.07. The application required by 61.07 is dealt with separately from any permit application; our compliance staff and permitting staff do coordinate on these projects and we are updating our internal procedures to assure that these separate requirements are understood and followed as we move forward.

6. Must applications submitted under § 61.07 meet the requirements for a NOI under UAC Rule R-307-401-5 and other applicable R-307-401 requirements?

Answer: The short answer is "no" as discussed above. The requirements spelled out in 40 CFR 61.07 may be submitted along with a Notice of Intent (NOI) along with any other information required under UAC R307-401, but are treated separately and independently of the NSR requirements.

Finally, let me say that we at the Utah Division of Air Quality take our jobs very seriously. The regulatory program that we administer is complex and has numerous overlapping and sometimes redundant requirements. We attempt to administer these programs in the most efficient way possible to minimize duplication and unnecessary bureaucracy. In the case of the uranium mines, it has become obvious that our approach needed clarification and perhaps a re-emphasis. This has resulted in the documents attached and referred to above.

Again, I want to thank you for your interest in air quality. If you have further questions, please don't hesitate to let me know.

Sincerely,

M. Cheryl Heying
Executive Secretary
Utah Air Quality Board

MCH:RO:JM:sl

Attachments.

DAQC-XXXX-09
Site #:XXXX

August , 2009

Contact Person
Mine Address

Re: 40 CFR 61 Subparts A and B requirements for Underground Uranium Mines

Dear Sirs:

The Utah Division of Air Quality (DAQ) has seen an increase in activity at underground uranium mining operations recently. The Code of Federal Regulations (CFR) Part 61 contains general provisions in Subpart A and specific rules in Subpart B titled *National Emission Standards for Radon Emissions From Underground Uranium Mines*. The intent of this correspondence is to inform you that these regulations may apply to your facility, and to collect information to determine the state of compliance of Subpart B regulated facilities in the state of Utah.

A factsheet outlining the requirements from 40 CFR 61 subparts A & B have been included as an attachment to this letter. Please review the factsheet and answer the four attached questions. Please submit your response to these questions with attention to the Minor Source Compliance Section, Division of Air Quality within 20 days of receipt of this letter.

Please refer to the 40 CFR Part 61, Subparts A and B to help you comply with the federal regulations. Direct any questions to Jay Morris at (801) 536-4079 or jpmorris@utah.gov.

Sincerely,

Jay Morris
Minor Source Compliance Manager

JPM:SLM:lgt

Attachments: Radon Emissions from Underground Mines Factsheet
Questions for Underground Uranium Mine Operators

40 CFR Part 61 Subparts A&B: Questions for Underground Uranium Mine Operators

Please answer the questions below and provide your response, as outlined in the cover letter. If you have any questions, please contact Jay Morris at (801) 536-4079 or jpmorris@utah.gov.

1. Do you own/operate an active underground uranium mine? If so, please provide the owner's/operator's contact information.

2. If you own/operate an active underground uranium mine, have you mined, will you mine, or is it designed to mine over 100,000 tons of or during its life? If no, please indicate how much ore the facility has mined, will mine, or is designed to mine during its life.

3. How much ore (in tons) has been or will be produced on an annual basis, during the life of the mine?

4. Please provide the operational history for your facility, includes dates of start-up, standby, operation, and closure.

5. Please provide the ownership history for your facility with dates.

6. Do you use Method 114 A-6 or A-7 to conduct testing for radon-222 emissions (40 CFR Part 61, Appendix B), as required by Method 115?

7. If you use method A-7, did you receive prior approval from EPA and if so when was approval granted? Please provide documentation of any EPA approval.

8. What computer code do you use to determine the effective does equivalent from radon-222 emissions? If you do not use COMPLY-R but instead us an equivalent computer model, has that model received prior approval from EPA? Please provide documentation of any EPA approval.

9. Please provide copies of all notifications, applications for approval, and annual reports submitted as required by 40 CFR Part 61 Subparts A and B.

10. Please provide copies of all State, local, and Federal licenses and permits received (including those received from Utah as an NRC Agreement State).

Radon Emissions From Underground Uranium Mines
40 CFR Part 61 Subpart A and Subpart B Fact Sheet and questions
(This document is not intended to be used in place of the Rule itself.)

Applicability Requirements

*Active underground uranium mines are required to comply with Subpart B if the mine:

1) has, will, or is designed to mine over 100,000 tons of ore during the life of the mine (§61.20(a)) or,

2) has an annual production greater than 10,000 tons (unless it is can be demonstrated that the mine will not exceed 100,000 tons during life of the mine) (§61.20(b)).

Notification Requirements

*Subpart A requires that the owner or operator submit an application to the Administrator for approval of construction for any new source or modification of an existing source. The application should be submitted before construction (§61.07).
*Subpart A states that no owner or operator shall construct or modify any stationary source without first obtaining written approval from the Administrator, after the effective date of Subpart B (12/15/89).

*Subpart A requires the mine to submit notification of initial startup (§61.09):

1) Notification of the anticipated date of initial startup of the mine shall be submitted not more than 60 days nor less than 30 days before that date,

2) Notification of the actual date of initial startup of the mine shall be submitted within 15 days after that date.

Standard*Emissions of radon-222 to the ambient air shall not exceed those amounts that would cause any member of the public to receive any year an effective dose equivalent of 10 mrem/yr (§61.22)

*Compliance with the standard must be determined by calculating the effective dose equivalent using EPA computer code COMPLY-R or a previously approved equivalent (§61.23).

*The COMPLY-R source terms shall be calculated by conducted radon-222 emissions testing in accordance with the procedures described in 40 CFR Part 61 Appendix B, Method 115 (§61.23).

Reporting Requirements

*Subpart B requires annual reporting of compliance determination calculations (§61.24). The report is sent to DAQ by March 31 of each year and shall include the information found in §61.24(a)(1-8).

*If the mine is not in compliance with the standard for the annual report, a monthly compliance determination and a monthly report is due within 30 days following the end of each month until the DAQ deems the monthly reports no longer necessary (§61.24(b)).

Recordkeeping Requirements

*Subpart B requires the owner or operator of a mine to maintain records documenting the source of input parameters used in the COMPLY R model to demonstrate compliance with the standard for a period of 5 years (§61.25)

Rec'd by e mail 10/21/09

From: Sarah Fields <sarahmfields@earthlink.net>
To: Paul Baker <paulbaker@utah.gov>
Date: 10/21/2009 4:15 PM
Subject: Re: Pandora Tentative Approval Letter
Attachments: UW_to CHeying.090914.pdf; 40CFR61A_61.06-61.19.doc

CC: Tom Munson <tommunson@utah.gov>

Dear Mr. Baker,

I request that the Division of Oil, Gas, and Mining (DOGM) NOT issue the approval of the two new vent shafts
until the Div. of Air Quality issues the approval until Denison and the Pandora and La Sal Mine Complex are in compliance with the requirements of 40 CFR Part 61, Subpart B (Radon NESHAPS for underground uranium mines) and Subpart A (General Provisions). Utah has primacy for radionuclide NESHAPS.

A fax was just sent to you with a recent letter from the Utah Division of Air Quality (DAQ). Let me know if you did
not receive it.

The DAQ letter relates to a series of communications back and forth between myself, the DAQ, and EPA Region 8 regarding the failure of Denison Mines and the DAQ to comply with the 40 CFR Sections 61.07 and 61.08 application and approval order requirements for a source of radon emissions. Attached are those requirements.

I have recently been working on some other situations, and am just getting back to looking at the La Sal uranium mines
with the BLM and state agencies.

The October 8 letter from Ms. Heying contains a form letter that was sent to Denison Mines Corporation and other uranium mine owners in Utah. Owners of uranium mines that have or intend to mine more than 100,000 tons of uranium ore are
required to submit an application for approval of construction for any new source or modification of existing source.
The mine owner is required to have an approval order responsive to the approval order, pursuant to 40 CFR Sec. 61.08. Also, the owner is supposed to notify the DAQ of initial startup, pursuant to 40 CFR Sec. 61.09. Once the mine is operating, the owner must submit annual reports, as outlined in Part 61, Subpart B.

Denison commenced operation of the Pandora and La Sal Mines without submitting a 61.07 application or notifying the DAQ of start up. They did file the annual reports for radon emissions with the DAQ and the EPA, as required. However, there monitoring equipment was not properly set up, so they had to discard 6-months worth of data. Confirmatory sampling is not required under Part 61, Subpart B.

This process is separate from and different than the notice of intent and approval associated with the mines' non-radiological emissions. The DAQ did not really understand their responsibilities for this program, since there had not been

I will contact the DAQ to find out if Denison submitted an application for its current radon emissions and if it received an approval order.

Even if Denison had an approval order for their existing operations, they would have to submit a new application and receive a new approval order for any modification that results in an increase in radon releases, i.e., new radon vents.

So, until Denison has the required approvals for their existing operation and the proposed vents, DOGM should not issue a permit for two new mine vents.

I am attaching my original letter to Ms. Heying. I have a few other letters that I will send you when I locate them.

There are some other issues:

The operating plans approved by the BLM for the Pandora and La Sal Complex (Snowball and La Sal Shafts) are less than 10 pages. The La Sal operating plan only mentions additional drilling. Yet, the BLM has allowed these mines to operate on these flimsy or non-existent operational plans.

The EPA was supposed to have reviewed and updated the radionuclide NESHAPS by 2000. They have started the review of one, Subpart W for operating uranium mills, after a suit was filed in Colorado, but have not commenced a review of Subpart B.

This is just the tip of the non-regulatory programs associated with uranium mines. The more I look, the worse it looks.

If you do issue the vent permit, please let me know.

Also, let me know if you have any questions. I'll let you know what I hear from DAQ.

Regards,

Sarah Fields
Uranium Watch
435-210-0166

-----Original Message-----
>From: Paul Baker <paulbaker@utah.gov>
>Sent: Oct 21, 2009 4:22 PM
>To: sarahmfields@earthlink.net
>Cc: Tom Munson <tommunson@utah.gov>
>Subject: Pandora Tentative Approval Letter
>
>This is the letter giving tentative approval for the two new vent shafts. We just received the surety a few days ago, so I anticipate giving final approval shortly.
>
>Exploration drilling has slowed down significantly compared to 2006-2007, but we still have a few projects. We have a new one called Lark-Royal near the Daneros mine.
>
>Paul Baker
>Minerals Program Manager
>Utah Division of Oil, Gas and Mining
>801-538-5261
>Fax 801-359-3940
>
>

Rec'd by e mail 10/21/09

Uranium Watch

P. O. Box 344
Moab, Utah 84532
435-210-0166

Via electronic and first class mail

September 14, 2009

Ms. Cheryl Heying
Executive Secretary
Utah Division of Air Quality
150 North 1950 West
Salt Lake City, UT 84114-4820
cheying@utah.gov

RE: Division of Air Quality Implementation of 40 C.F.R. Part 61, Subpart B: National Emission Standards for Hazardous Air Pollutants from Underground Uranium Mines

Dear Ms. Heying,

This is a follow up our conversation in your office on September 2. I apologize for the time it has taken to provide this letter.

SUMMARY OF CONCERNS

1. The Division of Air Quality (DAQ) has failed to implement their primacy responsibilities for administering and enforcing the requirements of 40 C.F.R. Part 61, Subpart A, as it applies to Subpart B requirements.

2. To the best of my knowledge, none of the owners of any of the 40 C.F.R. Part 61, Subpart B, regulated sources in Utah have submitted an application, pursuant to 40 C.F.R. § 61.07, for construction or modification of a new Part 61, Subpart B, source. These sources are 3 operating mines: Tony M Mine, Pandora Mine, and La Sal Mine Complex (Beaver Shaft, La Sal Mine, and Snowball Mine), and one proposed mine: Velvet Mine.

The owners of these mine have submitted notices of intent (NOIs) to the DAQ for their non-radioactive emissions, but have not submitted applications that meets the requirements of an application for approval of construction or modification of a new Part 61, Subpart B, source. The NOIs submitted by the mine owners[1] relating to the non-

[1] I received the Velvet Mine NOI on September 10.

radioactive emissions did not meet the requirements of § 61.07, and, to the best of my knowledge, no other applications have been submitted pursuant to § 61.07. This section state:

> § 61.07 Application for approval of construction or modification.
> (a) The owner or operator shall submit to the Administrator an application for approval of the construction of any new source or modification of any existing source. The application shall be submitted before the construction or modification is planned to commence, or within 30 days after the effective date if the construction or modification had commenced before the effective date and initial startup has not occurred. A separate application shall be submitted for each stationary source.
> (b) Each application for approval of construction shall include—
> (1) The name and address of the applicant;
> (2) The location or proposed location of the source; and
> (3) Technical information describing the proposed nature, size, design, operating design capacity, and method of operation of the source, including a description of any equipment to be used for control of emissions. Such technical information shall include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations.

The NOIs for the La Sal Mines Project (Pandora and La Sal Complex), the Tony M Mine, and the Velvet Mine did not indicate that they were being submitted pursuant to § 61.07. The NOIs failed to include the technical information required by § 61.07(b)(3).

The NOIs do not meet the requirements of UAC Rule R-307-401-5 regarding the content of a NOI with respect their radon emissions.

3. The Intent to Approve notices for the La Sal Mines Project (DAQE-IN0141510002-09), Tony M Mine (DAQE-IN0140100001-07), and Velvet Mine (DAQE-IN0141930001-09) give no indication that they are notifications of intent to approve or deny pursuant to § 61.08, which requires the notification of "the owner or operator of approval or intention to deny approval of construction or modification within 60 days after receipt of sufficient information to evaluate an application under §61.07." However, the notices of Intent to Approve for the La Sal Mines Project and Velvet Mine indicate that they are approvals pursuant to, among other requirements, "NESHAP (Part 61), Title V (Part 70)."

4. The owner of the La Sal Mines Project commenced operation of Pandora Mine and La Sal Complex (combined) as sources of non-radiological emissions—prior to receiving a DAQ approval order.

5. The owner of the Pandora Mine, La Sal Complex, and Tony M mine commenced construction and operation of the mines without receiving an approval from the DAQ, pursuant to 40 C.F.R. § 61.08.

6. To the best of my knowledge, the owner of the Pandora Mine, La Sal Mine Complex,

and Tony M Mine failed to notify the DAQ of their initial startup as a Part 61, Subpart B, regulated source. Section 61.09 requires the notification of initial startup:

> **61.09 Notification of startup.**
> (a) The owner or operator of each stationary source which has an initial startup after the effective date of a standard shall furnish the Administrator with written notification as follows:
> (1) A notification of the anticipated date of initial startup of the source not more than 60 days nor less than 30 days before that date.
> (2) A notification of the actual date of initial startup of the source within 15 days after that date.
> ***
> (b) If any State or local agency requires a notice[,] which contains all the information required in the notification in paragraph (a) of this section, sending the Administrator a copy of that notification will satisfy paragraph (a) of this section.

7. When I brought up the applicability of § 61.07 to the La Sal Mines Project as a new source, the DAQ staff person sent my e-mail inquiry to the mine owner's technical contractor. The contractor said that the mines were not a "new source," and that was the answer I got back from the DAQ. You and I know very well that it is highly improper for a DAQ staff person to refer a question from a member of the public to the permittee. For starters, it is the DAQ, not the applicant, who interprets DAQ and EPA regulations.

8. The La Sal Mines Project, Tony M Mine, and Velvet Mine meet the definition of Part 61 new source:

> New source means any stationary source, the construction or modification of which is commenced after the publication in the Federal Register of proposed national emission standards for hazardous air pollutants which will be applicable to such source. [40 C.F.R. § 61.02].

9. What I perceive is the failure of the DAQ to establish regulatory program that fully implements the State of Utah's primacy responsibility for Part 61, Subpart B sources. As far as I can tell, the DAQ has no internal guidance for the staff to follow and no regulatory guidance available to the public or industry with respect the implementation of Part 61 radionuclide source regulation. Also, it does not appear that the DAQ has promulgated any specific regulations that state how the DAQ is going to implement its Part 61 responsibilities. There is an obvious lack of clarity, which impacts the staff, industry, and the public.

QUESTIONS AND REQUESTS FOR CLARIFICATION

1. What exactly does the DAQ intend to do to implement its responsibilities for the administration and enforcement of Part 61 Subpart B and Subpart A requirements?

2. Has the DAQ sent a letter to the owners of the La Sal Mines Project, Tony M Mine, and Velvet Mine requesting 40 C.F.R. §61.07 applications?

3. What is the DAQ going to do about the fact that the owner of the La Sal Mines Project commenced operation of the combined Pandora Mine and La Sal Complex prior to receiving an approval order for their non-radiological emissions?

4. What is the DAQ going to do about the fact that the owner of the Pandora Mine, La Sal Complex, and the Tony M Mine commenced construction and operation of the mines without having submitted a 40 C.F.R. § 61.07 applications, receiving a § 61.08 approvals, or notifying the DAQ of the startup of operations, pursuant to § 61.09?

5. What, exactly, is the applicable DAQ permitting program for Part 61 sources? 40 C.F.R. § 61.02 indicates that Part 61 state permits fall under Part 70 permitting requirements. Does the DAQ agree that a Part 61 approval is a Part 70 permit? Note that the notifications of Intent to Approve for the La Sal Mines Project and Velvet Mine indicate that they are approvals pursuant to, among other requirements, "NESHAP (Part 61), Title V (Part 70)."

6. Must applications submitted under § 61.07 meet the requirements for a NOI under UAC Rule R-307-401-5 and other applicable R-307-401 requirements?

In sum, I request information about what is going on and how the DAQ intends to modify it actions in order to properly and effectively administer and enforce Utah and federal statutes and regulations with respect the emission of radon from uranium mines in Utah. My concerns have immediate relevance. One of the mines in question releases radon less than .5 km from an elementary school. There is no confirmatory monitoring program, no meteorological data from the immediate area, no consideration of mitigative measures (e.g., adjustment of radon-vent stack height or mine bulkheading), no realistic dispersion model, no assessment of the nearby dispersal and uptake of radon progeny, and no provision for public input related to the radon emissions.

I request timely, written response to my concerns.

Sincerely,

Sarah M. Fields
Program Director

cc: Carol Smith, EPA Region 8

Recd by e mail 10/21/09

Title 40: Protection of Environment

□PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS □Subpart A—General Provisions

§ 61.06 Determination of construction or modification.

An owner or operator may submit to the Administrator a written application for a determination of whether actions intended to be taken by the owner or operator constitute construction or modification, or commencement thereof, of a source subject to a standard. The Administrator will notify the owner or operator of his determination within 30 days after receiving sufficient information to evaluate the application.

[50 FR 46291, Nov. 7, 1985]

§ 61.07 Application for approval of construction or modification.

(a) The owner or operator shall submit to the Administrator an application for approval of the construction of any new source or modification of any existing source. The application shall be submitted before the construction or modification is planned to commence, or within 30 days after the effective date if the construction or modification had commenced before the effective date and initial startup has not occurred. A separate application shall be submitted for each stationary source.

(b) Each application for approval of construction shall include—

(1) The name and address of the applicant;

(2) The location or proposed location of the source; and

(3) Technical information describing the proposed nature, size, design, operating design capacity, and method of operation of the source, including a description of any equipment to be used for control of emissions. Such technical information shall include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations.

(c) Each application for approval of modification shall include, in addition to the information required in paragraph (b) of this section—

(1) The precise nature of the proposed changes;

(2) The productive capacity of the source before and after the changes are completed; and

(3) Calculations of estimates of emissions before and after the changes are completed, in sufficient detail to permit assessment of the validity of the calculations.

[50 FR 46291, Nov. 7, 1985]

61.08 Approval of construction or modification.

(a) The Administrator will notify the owner or operator of approval or intention to deny approval of construction or modification within 60 days after receipt of sufficient information to evaluate an application under §61.07.

(b) If the Administrator determines that a stationary source for which an application under §61.07 was submitted will not cause emissions in violation of a standard if properly operated, the Administrator will approve the construction or modification.

(c) Before denying any application for approval of construction or modification, the Administrator will notify the applicant of the Administrator's intention to issue the denial together with—

(1) Notice of the information and findings on which the intended denial is based; and

(2) Notice of opportunity for the applicant to present, within such time limit as the Administrator shall specify, additional information or arguments to the Administrator before final action on the application.

(d) A final determination to deny any application for approval will be in writing and will specify the grounds on which the denial is based. The final determination will be made within 60 days of presentation of additional information or arguments, or 60 days after the final date specified for presentation if no presentation is made.

(e) Neither the submission of an application for approval nor the Administrator's approval of construction or modification shall—

(1) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or of any other applicable Federal, State, or local requirement; or

(2) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

[50 FR 46291, Nov. 7, 1985]

61.09 Notification of startup.

(a) The owner or operator of each stationary source which has an initial startup after the effective date of a standard shall furnish the Administrator with written notification as follows:

(1) A notification of the anticipated date of initial startup of the source not more than 60 days nor less than 30 days before that date.

(2) A notification of the actual date of initial startup of the source within 15 days after that date.

(b) If any State or local agency requires a notice which contains all the information required in the notification in paragraph (a) of this section, sending the Administrator a copy of that notification will satisfy paragraph (a) of this section.

[50 FR 46291, Nov. 7, 1985]

61.10 Source reporting and waiver request.

(a) The owner or operator of each existing source or each new source which had an initial startup before the effective date shall provide the following information in writing to the Administrator within 90 days after the effective date:

(1) Name and address of the owner or operator.

(2) The location of the source.

(3) The type of hazardous pollutants emitted by the stationary source.

(4) A brief description of the nature, size, design, and method of operation of the stationary source including the operating design capacity of the source. Identify each point of emission for each hazardous pollutant.

(5) The average weight per month of the hazardous materials being processed by the source, over the last 12 months preceding the date of the report.

(6) A description of the existing control equipment for each emission point including—

(i) Each control device for each hazardous pollutant; and

(ii) Estimated control efficiency (percent) for each control device.

(7) A statement by the owner or operator of the source as to whether the source can comply with the standards within 90 days after the effective date.

(b) The owner or operator of an existing source unable to comply with an applicable standard may request a waiver of compliance with that standard for a period not exceeding 2 years after the effective date. Any request shall be in writing and shall include the following information:

(1) A description of the controls to be installed to comply with the standard.

(2) A compliance schedule, including the date each step toward compliance will be reached. The list shall include as a minimum the following dates:

(i) Date by which contracts for emission control systems or process changes for emission control will be awarded, or date by which orders will be issued for the purchase of component parts to accomplish emission control or process changes;

(ii) Date of initiation of onsite construction or installation of emission control equipment or process change;

(iii) Date by which onsite construction or installation of emission control equipment or process change is to be completed; and

(iv) Date by which final compliance is to be achieved.

(3) A description of interim emission control steps which will be taken during the waiver period.

(c) Any change in the information provided under paragraph (a) of this section or §61.07(b) shall be provided to the Administrator within 30 days after the change. However, if any change will result from modification of the source, §§61.07(c) and 61.08 apply.

(d) A possible format for reporting under this section is included as appendix A of this part. Advice on reporting the status of compliance may be obtained from the Administrator.

(e) For the purposes of this part, time periods specified in days shall be measured in calendar days, even if the word "calendar" is absent, unless otherwise specified in an applicable requirement.

(f) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification shall be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a

particular event takes place, the notification shall be postmarked on or before 15 days following the end of the event. The use of reliable non-Government mail carriers that provide indications of verifiable delivery of information required to be submitted to the Administrator, similar to the postmark provided by the U.S. Postal Service, or alternative means of delivery agreed to by the permitting authority, is acceptable.

(g) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(h) If an owner or operator of a stationary source in a State with delegated authority is required to submit reports under this part to the State, and if the State has an established timeline for the submission of reports that is consistent with the reporting frequency(ies) specified for such source under this part, the owner or operator may change the dates by which reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State. The allowance in the previous sentence applies in each State beginning 1 year after the source is required to be in compliance with the applicable subpart in this part. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(i) If an owner or operator supervises one or more stationary sources affected by standards set under this part and standards set under part 60, part 63, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State with an approved permit program) a common schedule on which reports required by each applicable standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the source is required to be in compliance with the applicable subpart in this part, or 1 year after the source is required to be in compliance with the applicable part 60 or part 63 standard, whichever is latest. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(j)(1)(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (j)(2) and (j)(3) of this section, the owner or operator of an affected source remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (j)(2) and (j)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed

by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(4) If the Administrator is unable to meet a specified deadline, he or she will notify the owner or operator of any significant delay and inform the owner or operator of the amended schedule.

[38 FR 8826, Apr. 6, 1973, as amended at 50 FR 46292, Nov. 7, 1985; 59 FR 12430, Mar. 16, 1994]

61.11 Waiver of compliance.

(a) Based on the information provided in any request under §61.10, or other information, the Administrator may grant a waiver of compliance with a standard for a period not exceeding 2 years after the effective date of the standard.

(b) The waiver will be in writing and will—

(1) Identify the stationary source covered;

(2) Specify the termination date of the waiver;

(3) Specify dates by which steps toward compliance are to be taken; and

(4) Specify any additional conditions which the Administrator determines necessary to assure installation of the necessary controls within the waiver period and to assure protection of the health of persons during the waiver period.

(c) The Administrator may terminate the waiver at an earlier date than specified if any specification under paragraphs (b)(3) and (b)(4) of this section are not met.

(d) Before denying any request for a waiver, the Administrator will notify the owner or operator making the request of the Administrator's intention to issue the denial, together with—

(1) Notice of the information and findings on which the intended denial is based; and

(2) Notice of opportunity for the owner or operator to present, within the time limit the Administrator specifies, additional information or arguments to the Administrator before final action on the request.

(e) A final determination to deny any request for a waiver will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 60 days after presentation of additional information or argument; or within 60 days after the final date specified for the presentation if no presentation is made.

(f) The granting of a waiver under this section shall not abrogate the Administrator's authority under section 114 of the Act.

[50 FR 46292, Nov. 7, 1985]

61.12 Compliance with standards and maintenance requirements.

(a) Compliance with numerical emission limits shall be determined in accordance with emission tests established in §61.13 or as otherwise specified in an individual subpart.

(b) Compliance with design, equipment, work practice or operational standards shall be determined as specified in an individual subpart.

(c) The owner or operator of each stationary source shall maintain and operate the source, including associated equipment for air pollution control, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the source.

(d)(1) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in emissions of a pollutant from a source at least equivalent to the reduction in emissions of that pollutant from that source achieved under any design, equipment, work practice or operational standard, the Administrator will publish in theFederal Registera notice permitting the use of the alternative means for purposes of compliance with the standard. The notice will restrict the permission to the source(s) or category(ies) of sources on which the alternative means will achieve equivalent emission reductions. The notice may condition permission on requirements related to the operation and maintenance of the alternative means.

(2) Any notice under paragraph (d)(1) shall be published only after notice and an opportunity for a hearing.

(3) Any person seeking permission under this subsection shall, unless otherwise specified in the applicable subpart, submit a proposed test plan or the results of testing and monitoring, a description of the procedures followed in testing or monitoring, and a description of pertinent conditions during testing or monitoring.

(e) For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this part, nothing in this part shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed.

[50 FR 46292, Nov. 7, 1985, as amended 62 FR 8328, Feb. 24, 1997]

§ 61.13 Emission tests and waiver of emission tests.

(a) Except as provided in paragraphs (a)(3), (a)(4), (a)(5), and (a)(6) of this section, if required to do emission testing by an applicable subpart and unless a waiver of emission testing is obtained under this section, the owner or operator shall test emissions from the source:

(1) Within 90 days after the effective date, for an existing source or a new source which has an initial startup date before the effective date.

(2) Within 90 days after initial startup, for a new source which has an initial startup date after the effective date.

(3) If a force majeure is about to occur, occurs, or has occurred for which the affected owner or operator intends to assert a claim of force majeure, the owner or operator shall notify the Administrator, in writing as soon as practicable following the date the owner or operator first knew, or through due diligence should have known that the event may cause or caused a delay in testing beyond the regulatory deadline specified in paragraphs (a)(1) or (a)(2) of this section or beyond a deadline established pursuant to the requirements under paragraph (b) of this section, but the notification must occur before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification shall occur as soon as practicable.

(4) The owner or operator shall provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to minimize the delay; and identify a date by which the owner or operator proposes to conduct the performance test. The performance test shall be conducted as soon as practicable after the force majeure occurs.

(5) The decision as to whether or not to grant an extension to the performance test

deadline is solely within the discretion of the Administrator. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an extension as soon as practicable.

(6) Until an extension of the performance test deadline has been approved by the Administrator under paragraphs (a)(3), (a)(4), and (a)(5) of this section, the owner or operator of the affected facility remains strictly subject to the requirements of this part.

(b) The Administrator may require an owner or operator to test emissions from the source at any other time when the action is authorized by section 114 of the Act.

(c) The owner or operator shall notify the Administrator of the emission test at least 30 days before the emission test to allow the Administrator the opportunity to have an observer present during the test.

(d) If required to do emission testing, the owner or operator of each new source and, at the request of the Administrator, the owner or operator of each existing source shall provide emission testing facilities as follows:

(1) Sampling ports adequate for test methods applicable to each source.

(2) Safe sampling platform(s).

(3) Safe access to sampling platform(s).

(4) Utilities for sampling and testing equipment.

(5) Any other facilities that the Administrator needs to safely and properly test a source.

(e) Each emission test shall be conducted under such conditions as the Administrator shall specify based on design and operational characteristics of the source.

(f) Unless otherwise specified in an applicable subpart, samples shall be analyzed and emissions determined within 30 days after each emission test has been completed. The owner or operator shall report the determinations of the emission test to the Administrator by a registered letter sent before the close of business on the 31st day following the completion of the emission test.

(g) The owner or operator shall retain at the source and make available, upon request, for inspection by the Administrator, for a minimum of 2 years, records of emission test results and other data needed to determine emissions.

(h)(1) Emission tests shall be conducted as set forth in this section, the applicable subpart and appendix B unless the Administrator—

(i) Specifies or approves the use of a reference method with minor changes in methodology; or

(ii) Approves the use of an alternative method; or

(iii) Waives the requirement for emission testing because the owner or operator of a source has demonstrated by other means to the Administrator's satisfaction that the source is in compliance with the standard.

(2) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative method, he may require the use of a reference method. If the results of the reference and alternative methods do not agree, the results obtained by the reference method prevail.

(3) The owner or operator may request approval for the use of an alternative method at any time, except—

(i) For an existing source or a new source that had an initial startup before the effective date, any request for use of an alternative method during the initial emission test shall be submitted to the Administrator within 30 days after the effective date, or with the request for a waiver of compliance if one is submitted under §60.10(b); or

(ii) For a new source that has an initial startup after the effective date, any request for use of an alternative method during the initial emission test shall be submitted to the Administrator no later than with the notification of anticipated startup required under §60.09.

(i)(1) Emission tests may be waived upon written application to the Administrator if, in the Administrator's judgment, the source is meeting the standard, or the source is being operated under a waiver or compliance, or the owner or operator has requested a waiver of compliance and the Administrator is still considering that request.

(2) If application for waiver of the emission test is made, the application shall accompany the information required by §61.10 or the notification of startup required by §61.09, whichever is applicable. A possible format is contained in appendix A to this part.

(3) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later cancelling the waiver. The cancellation will be made only after notice is given to the owner or operator of the source.

[50 FR 46292, Nov. 7, 1985, as amended at 72 FR 27442, May 16, 2007]

§ 61.14 Monitoring requirements.

(a) Unless otherwise specified, this section applies to each monitoring system required under each subpart which requires monitoring.

(b) Each owner or operator shall maintain and operate each monitoring system as specified in the applicable subpart and in a manner consistent with good air pollution control practice for minimizing emissions. Any unavoidable breakdown or malfunction of the monitoring system should be repaired or adjusted as soon as practicable after its occurrence. The Administrator's determination of whether acceptable operating and maintenance procedures are being used will be based on information which may include, but not be limited to, review of operating and maintenance procedures, manufacturer recommendations and specifications, and inspection of the monitoring system.

(c) When required by the applicable subpart, and at any other time the Administrator may require, the owner or operator of a source being monitored shall conduct a performance evaluation of the monitoring system and furnish the Administrator with a copy of a written report of the results within 60 days of the evaluation. Such a performance evaluation shall be conducted according to the applicable specifications and procedures described in the applicable subpart. The owner or operator of the source shall furnish the Administrator with written notification of the date of the performance evaluation at least 30 days before the evaluation is to begin.

(d) When the effluents from a single source, or from two or more sources subject to the same emission standards, are combined before being released to the atmosphere, the owner or operator shall install a monitoring system on each effluent or on the combined effluent. If two or more sources are not subject to the same emission standards, the owner or operator shall install a separate monitoring system on each effluent, unless otherwise specified. If the applicable standard is a mass emission standard and the effluent from one source is released to the atmosphere through more than one point, the owner or operator shall install a monitoring system at each emission point unless the installation of fewer systems is approved by the Administrator.

(e) The owner or operator of each monitoring system shall reduce the monitoring data as specified in each applicable subpart. Monitoring data recorded during periods of unavoidable monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments shall not be included in any data average.

(f) The owner or operator shall maintain records of monitoring data, monitoring system calibration checks, and the occurrence and duration of any period during which the monitoring system is malfunctioning or inoperative. These records shall be maintained at the source for a minimum of 2 years and made available, upon request, for inspection by the Administrator.

(g)(1) Monitoring shall be conducted as set forth in this section and the applicable subpart unless the Administrator—

(i) Specifies or approves the use of the specified monitoring requirements and procedures with minor changes in methodology; or

(ii) Approves the use of alternatives to any monitoring requirements or procedures.

(2) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative monitoring method, the Administrator may require the monitoring requirements and procedures specified in this part.

[50 FR 46293, Nov. 7, 1985]

§ 61.15 Modification.

(a) Except as provided under paragraph (d) of this section, any physical or operational change to a stationary source which results in an increase in the rate of emission to the atmosphere of a hazardous pollutant to which a standard applies shall be considered a modification.

(b) Upon modification, an existing source shall become a new source for each hazardous pollutant for which the rate of emission to the atmosphere increases and to which a standard applies.

(c) Emission rate shall be expressed as kg/hr of any hazardous pollutant discharged into the atmosphere for which a standard is applicable. The Administrator shall use the following to determine the emission rate:

(1) Emission factors as specified in the background information document (BID) for the applicable standard, or in the latest issue of "Compilation of Air Pollutant Emission Factors," EPA Publication No. AP–42, or other emission factors determined by the Administrator to be superior to AP–42 emission factors, in cases where use of emission factors demonstrates that the emission rate will clearly increase or clearly not increase as a result of the physical or operational change.

(2) Material balances, monitoring data, or manual emission tests in cases where use of emission factors, as referenced in paragraph (c)(1) of this section, does not demonstrate to the Administrator's satisfaction that the emission rate will clearly increase or clearly not increase as a result of the physical or operational change, or where an interested person demonstrates to the Administrator's satisfaction that there are reasonable grounds to dispute the result obtained by the Administrator using emission factors. When the emission rate is based on results from manual emission tests or monitoring data, the procedures specified in appendix C of 40 CFR part 60 shall be used to determine whether an increase in emission rate has occurred. Tests shall be conducted under such conditions as the Administrator shall specify to the owner or operator. At least three test runs must be conducted before and at least three after the physical or operational change. If the Administrator approves, the results of the emission tests required in §61.13(a) may be

used for the test runs to be conducted before the physical or operational change. All operating parameters which may affect emissions must be held constant to the maximum degree feasible for all test runs.

(d) The following shall not, by themselves, be considered modifications under this part:

(1) Maintenance, repair, and replacement which the Administrator determines to be routine for a source category.

(2) An increase in production rate of a stationary source, if that increase can be accomplished without a capital expenditure on the stationary source.

(3) An increase in the hours of operation.

(4) Any conversion to coal that meets the requirements specified in section 111(a)(8) of the Act.

(5) The relocation or change in ownership of a stationary source. However, such activities must be reported in accordance with §61.10(c).

[50 FR 46294, Nov. 7, 1985]

§ 61.16 Availability of information.

The availability to the public of information provided to, or otherwise obtained by, the Administrator under this part shall be governed by part 2 of this chapter.

[38 FR 8826, Apr. 6, 1973. Redesignated at 50 FR 46294, Nov. 7, 1985]

61.17 State authority.

(a) This part shall not be construed to preclude any State or political subdivision thereof from—

(1) Adopting and enforcing any emission limiting regulation applicable to a stationary source, provided that such emission limiting regulation is not less stringent than the standards prescribed under this part; or

(2) Requiring the owner or operator of a stationary source to obtain permits, licenses, or approvals prior to initiating construction, modification, or operation of the source.

[50 FR 46294, Nov. 7, 1985]

61.19 Circumvention.

No owner or operator shall build, erect, install, or use any article machine, equipment, process, or method, the use of which conceals an emission which would otherwise constitute a violation of an applicable standard. Such concealment includes, but is not limited to, the use of gaseous dilutants to achieve compliance with a visible emissions standard, and the piecemeal carrying out of an operation to avoid coverage by a standard that applies only to operations larger than a specified size.

[40 FR 48299, Oct. 14, 1975. Redesignated at 50 FR 46294, Nov. 7, 1985]